

Valley Wood Preserving

31333

1317-00017

90-02

1 Gavin G. McCabe  
2 Assistant Regional Counsel  
3 United States Environmental Protection Agency  
4 1235 Mission Street  
5 San Francisco, California 94103  
6 (415) 556-5878

7 Attorney for EPA

8 David Douglas Doyle  
9 Sylvia Halkousis Coyle  
10 Kimble, MacMichael & Upton  
11 A Professional Corporation  
12 5260 N. Palm, Suite 221  
13 Post Office Box 9489  
14 Fresno, California 93792-9489  
15 (209) 435-5500

16 Attorneys for Respondent

17 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
18 REGION 9

19 In the matter of: )

20 Valley Wood Preserving, Inc. )  
21 2237 South Golden State Boulevard )  
22 Turlock, California )

23 Valley Wood Preserving, Inc. )

24 RESPONDENT )

U.S. EPA Docket  
No. 90-02

25 Proceeding Under Sections 104, 106, )  
26 and 122 of the Comprehensive )  
27 Environmental Response, Comp- )  
ensation, and Liability Act of 1980 )  
(42 U.S.C. §§ 9604, 9606, and 9622), )  
as amended by the Superfund )  
Amendments and Reauthorization )  
Act of 1986. )

28 ADMINISTRATIVE CONSENT ORDER

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1                                    I.    INTRODUCTION AND JURISDICTION

2            A.    This Administrative Order on Consent ("Order") is en-  
3    tered into voluntarily by the United States Environmental Protec-  
4    tion Agency ("EPA") and Valley Wood Preserving, Inc.  
5    ("Respondent").

6            B.    This Order is entered into pursuant to the authority  
7    vested in the President of the United States by Sections 104, 106  
8    and 122 of the Comprehensive Environmental Response, Compensa-  
9    tion, and Liability Act of 1980, as amended by the Superfund  
10   Amendments and Reauthorization Act of 1986, ("CERCLA"), 42 U.S.C.  
11   §§ 9604, 9606 and 9622. The President delegated this authority  
12   to the Administrator of the United States Environmental Protec-  
13   tion Agency ("EPA" or "Agency") by Executive Order 12580, 52 Fed.  
14   Reg. 2923, and further delegated this authority to the Assistant  
15   Administrator for Solid Waste and Emergency Response and the  
16   Regional Administrators by EPA Delegation Nos. 14-8-A and 14-14-

17   C.    This authority has been redelegated to the Director, Hazard-  
18   ous Waste Management Division, EPA, Region 9.

19           C.    The Director of the Hazardous Waste Management Division,  
20   EPA Region 9 ("the Director"), has determined that there is an  
21   imminent and substantial endangerment to the public health, wel-  
22   fare and the environment because of the release and threatened  
23   release of hazardous substances at and from the Valley Wood  
24   Preserving, Inc. Site, 2237 South Golden State Boulevard, Tur-  
25   lock, California (the "Site" or the "Facility").

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1 D. In entering into this Consent Order, the mutual objec-  
2 tives of EPA and Respondent are:

3 1. To conduct the Remedial Investigation ("RI") in  
4 accordance with EPA RI/FS guidance ("Guidance on Remedial  
5 Investigations and Feasibility Studies under CERCLA,"  
6 October 1988) and any EPA updates or revisions to this  
7 guidance, in order to determine fully the nature and extent  
8 of contamination and the potential for harm to the public  
9 health or welfare or the environment caused by the release  
10 or threatened release of hazardous substances, pollutants,  
11 or contaminants at or from the Site, as defined in Section  
12 III(B) below. The RI/FS guidance specifies work to be  
13 performed as part of the RI, including, among other things,  
14 sediment and water sampling, soil core boring and sampling,  
15 monitoring well placement, ground water sampling, pumping  
16 and aquifer tests. It also includes a list of reports,  
17 documents and other deliverables that Respondent will  
18 provide for EPA's review, comment and/or approval.

19 2. To conduct the Feasibility Study ("FS") described  
20 in the RI/FS guidance for evaluating remedial action alter-  
21 natives to prevent and eliminate the release or threatened  
22 release of hazardous substances, pollutants, or contaminants  
23 at or from the Site.

24 3. To undertake all actions required by the terms and  
25 conditions of this Consent Order in accordance with the  
26 provisions of CERCLA and the National Contingency Plan  
27

1 ("NCP"), 40 C.F.R. Part 300, et seq., as amended.

2 E. Respondent agrees to undertake all actions required by  
3 this Order. Respondent agrees to all of the terms and conditions  
4 of this Order. Respondent agrees that in any action by EPA to  
5 enforce this Order, Respondent will not contest: (1) the  
6 authority or jurisdiction of the Director to issue this Order,  
7 nor (2) any of the terms or conditions of this Order.

8 F. EPA has designated a Project Coordinator for the Site  
9 who has the powers vested in both the Remedial Project Manager  
10 and the On-Scene-Coordinator ("OSC"), pursuant to 40 C.F.R. Part  
11 300, published at 55 Fed. Reg. 8666 (March 8, 1990).

12 G. By entering into this Order, Respondent does not admit  
13 the truth of any statements contained in the Findings of Fact or  
14 Conclusions of Law, or the Determinations made herein, nor does  
15 Respondent admit any liability or admit any issues of law or fact  
16 or any responsibility for the alleged release or threatened  
17 release of any hazardous substances into the environment. Noth-  
18 ing contained in this paragraph shall relieve Respondent from its  
19 obligation to perform the work and to do those things as provided  
20 for in this Order.

21 H. This Order is not intended to be used or to be admis-  
22 sible in any proceeding brought by any third party in relation-  
23 ship to the Site, or to Respondent.

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1 II. FINDINGS OF FACT

2 BACKGROUND

3 A. The Valley Wood Preserving Site occupies approximately  
4 13.1 acres along South Golden Gate Boulevard in Turlock, Califor-  
5 nia. The Site lies within a residential and agricultural region.

6 B. Valley Wood Preserving, Inc. conducted operations at the  
7 Site from 1973 until 1979. The company preserved lumber using an  
8 aqueous solution containing one to two percent chromated-copper-  
9 arsenate ("Cr-As-Cu" or "CCA solution"). The wood preserving  
10 chemicals were stored and mixed on-Site in three above-ground  
11 storage tanks.

12 C. Lumber, in loads of up to 20,000 pounds, was placed onto  
13 a rail-mounted treatment train and pushed into one of two  
14 pressure-treatment cylinders. The cylinders or retorts were  
15 evacuated by vacuum and filled with the CCA solution to impreg-  
16 nate the lumber. The treatment train would then exit the  
17 cylinder, and the wood would be unloaded and allowed to drip dry  
18 on paved and, at times, unpaved areas.

19 D. In 1979, the California Central Valley Regional Water  
20 Quality Control Board ("CCVRWQCB") identified toxic wood treating  
21 chemicals (Cr,As,Cu) within an on-Site storage pond, within hold-  
22 ing tanks, and within on-Site and off-Site soils. In addition,  
23 groundwater contamination was detected within the shallow uncon-  
24 fined aquifer at the Site. Finally, there has been at least one  
25 documented incident of a spill at the Site.

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1           E. After detecting groundwater contamination at the Site in  
2 November of 1979, the CCVRWQCB issued a clean-up order to Respon-  
3 dent. In 1980, the CCVRWQCB obtained a preliminary injunction  
4 ordering Respondent to undertake certain response actions at the  
5 Site. In the early 1980's, Respondent hired CH2M Hill to conduct  
6 soil and groundwater sampling at the Site and attempted to imple-  
7 ment three types of remedial technologies to treat extracted  
8 groundwater: evaporation; chemical treatment; and electrochemical  
9 treatment. However, Respondent ceased remedial efforts in 1983,  
10 due to alleged financial difficulties.

11           F. In March of 1987, the California Department of Health  
12 Services ("DHS"), Toxic Substances Control Division, issued a  
13 Remedial Action Order to Respondent requiring it to conduct a  
14 remedial investigation and feasibility study (RI/FS) and develop  
15 a Remedial Action Plan (RAP). In response to the State Remedial  
16 Action Order, Respondent contracted with Geosystem of Irvine,  
17 California to conduct an RI/FS at the Site.

18           G. In January of 1989, Respondent submitted to DHS a draft  
19 remedial investigation report prepared by Geosystem. The draft  
20 remedial investigation report concluded that the contaminant  
21 plume extends over 1600 feet off-Site, is migrating further  
22 downgradient, and poses a substantial threat to neighboring  
23 domestic wells. In addition, the report indicated the need for  
24 additional studies to fully assess the hydrogeologic and geologic  
25 conditions at the Site.

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1           H. In July 1989, Respondent submitted an additional work  
2 plan to continue the remedial investigation. In December 1989,  
3 Respondent submitted a revised additional remedial investigation  
4 workplan and schedule. EPA is currently reviewing the revised  
5 workplan and schedule. Monthly groundwater sampling data col-  
6 lected by Geosystem during this period shows that, in general,  
7 contaminant levels have decreased in on-Site groundwater and have  
8 increased in off-Site groundwater.

9           I. The primary contaminant in the groundwater at the Site  
10 is chromium, including both hexavalent and trivalent chromium.  
11 The State of California Maximum Contaminant Level ("MCL") for to-  
12 tal chromium in groundwater has been set at 0.05 ppm. Groundwater  
13 concentrations of hexavalent and trivalent chromium at the Site  
14 range from less than 0.01 ppm to 6.5 ppm. The most recent  
15 samples taken from the neighboring domestic wells reveal total  
16 chromium concentrations ranging from less than 0.01 ppm to 0.0142  
17 ppm. Exposure to chromium compounds has been linked to an in-  
18 creased incidence of lung cancer and other forms of cancer in  
19 humans. Chronic exposure can result in severe liver and kidney  
20 damage, and skin ulcers.

21           J. Arsenic has also been found in groundwater samples taken  
22 on-Site in concentrations ranging from less than 0.01 ppm to  
23 0.28 ppm and in groundwater samples taken at neighboring domestic  
24 wells in concentrations ranging from less than 0.005 ppm to  
25 0.0075 ppm. The MCL for arsenic in groundwater is 0.05 ppm. Ar-  
26 senic exposure has been linked to increased incidence of human

27

1 lung and skin cancer. Chronic arsenic exposure can produce  
2 malaise, fatigue, changes in skin pigmentation, gastrointestinal  
3 disturbance and liver damage. Acute exposures to high concentra-  
4 tions of arsenic can be fatal.

5 K. In August 1989 EPA and DHS met to discuss the progress  
6 of remediation at the Site. EPA and DHS agreed that EPA would  
7 thenceforth take lead agency responsibility for Site remediation.

8 L. Under the provisions of Section 105 of CERCLA, 42 U.S.C.  
9 § 9605, the Site was proposed for inclusion on EPA's National  
10 Priorities List ("NPL") on June 24, 1988. The Site was placed on  
11 the NPL on March 3, 1989. See 54 Fed. Reg. 13296. Respondent  
12 received notice of its CERCLA liability in a letter from EPA  
13 dated August 3, 1989.

14 M. In December 1989 Respondent reached agreement with EPA  
15 to develop and implement an on-Site groundwater removal and  
16 treatment system to abate the imminent and substantial endanger-  
17 ment posed by the off-Site migration of contaminated groundwater.  
18 This agreement is embodied in EPA Administrative Consent Order  
19 Number 90-01.

20 Responsible Parties

21 N. Respondent Valley Wood Preserving, Inc. conducted its  
22 operations on the Site from 1973 until 1979 and is currently the  
23 legal owner of the Site. Valley Wood Preserving, Inc. is there-  
24 fore an owner and operator of the Site, as defined in Section  
25 107(a) of CERCLA, 42 U.S.C. § 9607(a).

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1                                    **III. CONCLUSIONS OF LAW**

2            A. Respondent is a "person" as defined in Section 101(21)  
3 of CERCLA, 42 U.S.C. § 9601(21).

4            B. The property located at the Valley Wood Preserving, Inc.  
5 Site, 2237 South Golden State Boulevard, Turlock, California is a  
6 "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. §  
7 9601(9).

8            C. The chromium, copper, and arsenic, and their con-  
9 stituents found in the soil and groundwater at the Site are  
10 "hazardous substances" as that term is defined in Section 101(14)  
11 of CERCLA, 42 U.S.C. § 9601(14).

12           D. There have been "releases" and "threats of releases" of  
13 hazardous substances into the environment, as defined in Section  
14 101(22) of CERCLA, 42 U.S.C. § 9601(22), including the presence  
15 of hazardous substances within the soil and groundwater on-Site  
16 and the groundwater migrating from the Site.

17           E. Respondent is a "responsible party" as defined in Sec-  
18 tion 107(a) of CERCLA, 42 U.S.C. § 9607(a).

19  
20                                    **IV. DETERMINATIONS**

21           Based on the Findings of Fact and Conclusions of Law set  
22 forth above, the Director of Hazardous Waste Management Division,  
23 EPA Region 9 has determined that:

24           A. The actual and threatened releases of hazardous sub-  
25 stances from the Site may present an imminent and substantial en-  
26 dangerment to the public health or welfare or the environment.

1           B. The actions required by this Consent Order are necessary  
2 to protect the public health, welfare and the environment.

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#### V. WORK TO BE PERFORMED

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##### A. General Provisions

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7           1. All work performed pursuant to this Order shall be  
8 under the direction and supervision of a qualified professional  
9 engineer. Within fifteen (15) days prior to initiation of any  
10 work pursuant to this Order, Respondent shall notify EPA in writ-  
11 ing of the name, title, and qualifications of such engineer and  
12 of any contractors and/or subcontractors to be used in carrying  
13 out the terms of this Order. The qualifications of the persons  
14 undertaking the work for Respondent shall be subject to EPA's  
15 review, for verification that such persons meet the minimum tech-  
16 nical background and experience. If EPA disapproves in writing  
17 of the technical qualifications of any person(s), Respondent  
18 shall, within fifteen (15) days of the written notice, notify EPA  
19 of the identity and qualifications of the replacement(s). If EPA  
20 subsequently disapproves of the replacement(s), EPA may, as is  
21 its right under CERCLA and the NCP, conduct the RI/FS and seek  
22 reimbursement for costs from Respondent.

23

24           2. All work shall be performed in a manner which com-  
25 plies with all applicable requirements of CERCLA and the NCP and  
26 shall be conducted in accordance with EPA RI/FS guidance  
27 ("Guidance on Conducting Remedial Investigations and Feasibility  
Studies Under CERCLA," October 1988) and any EPA updates or revi-

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1 sions to this guidance, and with the standards, specifications,  
2 and schedules contained in the approved RI and FS Work Plans.  
3 Once the RI and FS Work Plans are finalized, the requirements  
4 thereunder shall not be subject to dispute resolution procedures  
5 (Section X).

6 3. Any deliverables, plans, technical memoranda,  
7 reports (other than progress reports), and schedules required by  
8 this Consent Order are, upon approval by EPA, incorporated into  
9 this Consent Order. Any non-compliance with such EPA-approved  
10 reports, plans, and schedules shall be considered a failure to  
11 achieve the requirements of this Consent Order and may subject  
12 Respondent to the penalties set forth in Section XI.

13 4. In the event of unanticipated or changed cir-  
14 cumstances at the Site, Respondent shall notify EPA within  
15 twenty-four (24) hours, or, where there is a weekend or holiday  
16 intervening, within seventy-two (72) hours, of the discovery of  
17 the unanticipated or changed circumstances.

18 5. EPA may determine that additional tasks, including,  
19 but not limited to, remedial investigatory work, engineering  
20 evaluation, interim response measures, or tasks added in response  
21 to public comment, are necessary as part of the RI/FS. Respon-  
22 dent agrees to implement any additional tasks which EPA deter-  
23 mines are necessary as part of the RI/FS. The additional work  
24 shall be completed in accordance with standards, specifications,

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1 requirements and schedules determined or approved by EPA. As  
2 provided in Section XIII below, EPA reserves the right to under-  
3 take removal actions and/or remedial actions at any time.

4 6. All required testing and sampling shall be con-  
5 ducted in compliance with Section VIII of this Consent Order at a  
6 laboratory using EPA-approved methods and procedures.

7 B. Work and Deliverables

8 Based upon the Findings of Fact, Conclusions of Law and  
9 Determinations, and Respondent having agreed to be bound by the  
10 following terms and conditions, it is hereby ORDERED AND AGREED  
11 that Respondent shall perform the following work under the direc-  
12 tion of EPA's Project Coordinator.

13 Deliverables to be submitted by Respondent are listed below.  
14 This listing includes the type of review that EPA will conduct  
15 (either "Review and Comment" or "Review and Approval"). Open  
16 discussions between Respondent and EPA will be necessary to as-  
17 sure that deliverables contain sufficient detail. For the pur-  
18 poses of this Consent Order, "day" means calendar day unless  
19 specified in this Consent Order.

20 The deliverables shall consist of:

21	<u>Deliverable Category</u>	<u>Type of Review</u>
22	1. Revised Additional Remedial	EPA Review and Comment.
23	Investigation Work Plan	
24	and Schedule (Received	
	December 1989);	
25	2. Quality Assurance Project	Draft for EPA Review and
26	Plan (QAPP). (Received December	Comment; Final for EPA
27	1989. If amendments are	Review and Approval.
	requested by EPA, such amend-	
	ments shall be due within 30 days	
	of EPA's request.)	

<u>Deliverable Category</u>	<u>Type of Review</u>
3. Sampling and Analysis Plan (SAP). (Received December 1989. If amendments are requested by EPA, such amendments shall be due within 30 days of EPA's request.)	Draft for EPA Review and Comment; Final for EPA Review and Approval.
4. Detailed Regional Well Survey; Draft due within 30 days of the effective date of this Order;	Draft for EPA Review and Comment; Final for EPA Comment and Approval
5. Remedial Investigation Report, supplementing the draft RI Report (January 1989) with the additional RI work presented in the Revised Additional Work Plan and Schedule. Draft due within 120 days of the effective date of this Order;	Draft for EPA Review and Comment; Final for EPA Comment and Approval.
6. Feasibility Study Work Plan and Schedule. Draft due within 90 days of the effective date of this Order;	Draft for EPA Review and Comment; Final for EPA Comment and Approval.
7. Preliminary Remedial Alternative Development Technical Memo. Draft due within 90 days of the effective date of this Order;	Draft for EPA Review and Comment; No Final required.
8. Remedial Alternative Screening Report. Draft due within 120 days of the effective date of this Order;	Draft for EPA Review and Comment; Final for EPA Review and Approval.
9. Detailed Analysis and Comparison of Alternatives Report. Draft due within 150 days of the effective date of this Order;	Draft for EPA Review and Comment; Final for EPA Review and Approval.
10. Feasibility Study (FS) Report; EPA will prepare the Endangerment Assessment ("EA") portion of the FS pursuant to EPA guidance. Draft due within 180 days of the effective date of this Order;	Draft for EPA Review and Comment; Final for EPA Review and Approval.

1	<u>Deliverable Category</u>	<u>Type of Review</u>
2	11. Monthly Progress Reports containing a summary of the work performed during the preceding month, documentation of all sampling, and a summary of the work expected to be completed during the current month. These reports are due by the 20th of each month. In the future EPA may, in its sole discretion, require delivery of Progress Reports on a less frequent basis.	EPA Review and Comment.

C. EPA shall, as indicated above, review, comment upon, and approve or disapprove each report, document or other deliverable. Within the time period scheduled for review of Respondent's submittals, EPA shall notify Respondent in writing of EPA's approval, disapproval or if additional review time is required. In the event of any disapproval, EPA shall specify the reasons for such disapproval and recommend modifications regarding the disapproval.

1. Within thirty (30) days, or more if needed, of receipt of Respondent's submittals pursuant to Paragraph B above, EPA shall submit its comments to Respondent. Unless otherwise noted above, Respondent shall submit its final deliverables within thirty (30) days of receipt of EPA's comments.

2. Respondent may invoke dispute resolution procedures (Section X), if appropriate, only after it receives EPA's approval or disapproval of the amended deliverable.

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1           3. Respondent's deadlines shall be extended for an  
2 amount of time equal to any extra time required by EPA which is  
3 beyond the time specified above for EPA to review and comment on  
4 the deliverables under this Consent Order.

5           D. All documents, including progress and technical reports,  
6 approvals, disapprovals and other correspondence to be submitted  
7 pursuant to this Consent Order, shall be sent to the following  
8 persons or to such other persons as the parties hereafter may  
9 designate in writing, and shall be deemed submitted on the ear-  
10 liest of the date received by EPA or Respondent, the date of  
11 mailing by certified priority mail or express mail as shown on  
12 the postal receipt or post mark, or the date of delivery to a  
13 common carrier promising overnight delivery as shown on the  
14 carrier's receipt.

15           1. Three copies of documents required to be submitted  
16 to EPA shall be sent by overnight mail to:

17  
18                   Mary Masters  
19                   Superfund Enforcement Branch, H-7-2  
20                   U.S. Environmental Protection Agency  
21                   1235 Mission Street  
22                   San Francisco, CA 94103  
23                   (415) 744-1178

24  
25           Additional copies of documents shall be submitted to EPA upon  
26 request. Copies of documents to be submitted to Respondent shall  
27 be sent by overnight mail to:

28  
29                   Dr. Mohsen Mehran  
30                   Geosystem Consultants, Inc.  
31                   18218 McDermott East, Suite G  
32                   Irvine, CA 92714  
33                   (714) 553-8757; and

1 David Douglas Doyle  
2 Kimble, MacMichael & Upton  
3 5260 N. Palm, Suite 221  
4 Post Office Box 9489  
Fresno, California 93792-9489  
(209) 435-5500

5 2. Copies of documents submitted to EPA shall also be  
6 sent by first-class mail to the agencies listed below, to the  
7 contact person designated by the respective agencies:

8 Emanuel Mensah  
9 California Dept. of Health Services  
10 Toxic Substances Control Division  
11 Region 1  
4250 Power Inn Road  
Sacramento, CA 95826

12 Laurence Person  
13 California Central Valley Regional  
Water Quality Control Board  
14 3201 S Street  
Sacramento, CA 95816

15 James Simpson  
16 Stanislaus County  
Department of Environmental Services  
17 1716 Morgan Road  
Modesto, CA 95351

18 **VI. DESIGNATED PROJECT COORDINATORS**

19 A. EPA has designated a Project Coordinator for the Site  
20 who shall have the authorities, duties, and responsibilities  
21 vested in the Remedial Project Manager by the National Contin-  
22 gency Plan. For the purposes of this Consent Order, EPA's desig-  
23 nated Project Coordinator is Mary Masters, who can be reached at  
24 the address and telephone number listed above. Respondent's  
25 designated Project Coordinator for the purposes of this Consent  
26 Order is Dr. Mohsen Mehran, who can be reached at the address and  
27

1 telephone number listed above. The EPA Project Coordinator will  
2 be EPA's designated representative at the Site. To the maximum  
3 extent possible, all oral communication between Respondent and  
4 EPA concerning the activities performed pursuant to this Order  
5 shall be directed through the Project Coordinators. All docu-  
6 ments, including progress and technical reports, comments, recom-  
7 mendations, approvals, disapprovals and other terms and condi-  
8 tions of this Consent Order, shall be delivered in accordance  
9 with Section V above.

10 B. EPA and Respondent may change their respective Project  
11 Coordinators. Any such changes shall be accomplished by notify-  
12 ing the other party in writing at least one week prior to the  
13 change.

14 C. Consistent with the provisions of this Consent Order,  
15 the EPA Project Coordinator shall also have the authority vested  
16 in the On-Scene-Coordinator ("OSC") by the NCP. In addition, EPA  
17 has designated a separate individual as OSC, who shall also have  
18 such authority. This includes but is not limited to, the  
19 authority to halt, modify, conduct, or direct any tasks required  
20 by this Consent Order and/or undertake any response actions (or  
21 portions of response action(s)) when conditions present or may  
22 present a threat to public health or welfare or the environment  
23 as set forth in the NCP. The EPA OSC for the Site is:

24  
25 Robert Bornstein  
26 Emergency Response Section, H-8-3  
27 U.S. Environmental Protection Agency  
1235 Mission Street  
San Francisco, CA 94103  
(415) 744-1914

1 D. The absence of the EPA Project Coordinator or OSC from  
2 the Site shall not be cause for the stoppage of work.  
3

4 VII. ACCESS

5 A. Respondent shall provide EPA employees and other repre-  
6 sentatives with complete access to the Facility at all times.  
7 When feasible, EPA shall provide twenty-four (24) hours notice of  
8 its need for access to the Facility. Nothing in this Order  
9 limits any access rights that EPA or other agencies may have pur-  
10 suant to law.

11 B. To the extent that Respondent requires access to land  
12 other than land it owns or controls, Respondent shall use best  
13 efforts to obtain access agreements from the present owners or  
14 lessees within sixty (60) days of the effective date of this Con-  
15 sent Order. Such agreements shall provide reasonable access for  
16 EPA, its contractors and oversight officials, the state and its  
17 contractors, and Respondent or its authorized representatives. In  
18 the event that Respondent is not able to obtain access to  
19 property owned or controlled by persons or entities other than  
20 Respondent, Respondent shall notify EPA orally within seventy-two  
21 (72) hours and in writing within seven (7) days regarding both  
22 the lack of, and efforts to obtain, such access. EPA shall  
23 review such notification and if EPA determines that Respondent  
24 complied with the requirements of this Section, then the penalty  
25 provisions of Section XI shall not apply.

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1 C. Respondent shall use the quality assurance, quality con-  
2 trol, and chain of custody procedures described in the "EPA NEIC  
3 Policies and Procedures Manual," May 1978, revised November 1984,  
4 EPA-330/9-78-001-R and "Interim Guidelines and Specifications for  
5 Preparing Quality Assurance Project Plans," December 1985,  
6 QAMS-005/80, and any EPA updates or revisions to these guidances,  
7 while conducting all sample collection and analysis activities  
8 required by this Consent Order. Respondent shall consult with  
9 EPA in planning for and prior to all sampling and analysis. To  
10 provide quality assurance and maintain quality control, Respon-  
11 dent shall:

12 1. Use a laboratory which has a documented Quality Assurance  
13 Program that complies with EPA guidance document QAMS-005/80;

14 2. Ensure that EPA personnel and/or EPA authorized represen-  
15 tatives are allowed access to the laboratory and personnel util-  
16 ized by Respondent for analysis.

17 3. Ensure that the laboratory used by Respondent for  
18 analysis performs according to a method or methods deemed satis-  
19 factory to EPA.

20 D. Respondent shall permit EPA and/or its authorized repre-  
21 sentatives to inspect and copy all records, documents and other  
22 writings, including all sampling and monitoring data, that in any  
23 way concern soil, groundwater, surface water or air contamination  
24 at the Site. Nothing in this Consent Order shall be interpreted  
25 as limiting EPA's inspection authority under federal law.

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1           E. Respondent may assert a confidentiality claim, covering  
2   part or all of the information requested by this Consent Order  
3   pursuant to 40 C.F.R. § 2.203(b). The Parties agree that  
4   analytical data and data covered by Section 104(e)(7)(F) of  
5   CERCLA, 42 U.S.C. § 9604(e)(7)(F), shall not be claimed as con-  
6   fidential by Respondent and shall be provided to EPA by Respon-  
7   dent. Information determined to be confidential by EPA will be  
8   afforded the protection specified in 40 C.F.R. Part 2, Subpart B.  
9   If no such claim accompanies the information when it is submitted  
10   to EPA, it may be made available to the public by EPA without  
11   further notice to Respondent.

12           F. All data, factual information, and documents submitted  
13   by Respondent to EPA pursuant to this Consent Order shall be sub-  
14   ject to public inspection.

15           G. If, at any time during the RI/FS process, Respondent be-  
16   comes aware of the need for additional data beyond the scope of  
17   either the RI or FS Work Plans, Respondent shall have an affirma-  
18   tive obligation to submit a memorandum documenting the need for  
19   additional data to the EPA Project Coordinator within thirty (30)  
20   days.

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## 22                           IX. RECORD PRESERVATION

23           Respondent agrees that it shall preserve, during the pen-  
24   dency of this Consent Order and for a minimum of six (6) years  
25   after the final Record of Decision for the Site has been signed,  
26   a central repository of the records and documents (including com-  
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1   puter databases) required to be prepared under the RI and FS Work  
2   Plans. Respondent shall acquire and retain copies of all docu-  
3   ments that relate to hazardous waste contamination at the Site  
4   which are in the possession of its employees, agents, account-  
5   ants, contractors, or attorneys. After this six year period,  
6   Respondent shall notify EPA at least thirty (30) days before the  
7   documents are scheduled to be destroyed. If EPA requests that  
8   some or all such documents be saved, Respondent shall, at no cost  
9   to EPA, provide EPA with the documents or copies of the docu-  
10   ments. Respondent shall notify EPA of the address of the  
11   repository and shall provide access to EPA at all reasonable  
12   times.

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#### X. DISPUTE RESOLUTION

15       If Respondent objects to any EPA decision pursuant to Sec-  
16   tion V, Respondent shall notify EPA in writing of its objections  
17   within fourteen (14) calendar days of receipt of the decision.  
18   EPA and Respondent will then have an additional fourteen (14)  
19   calendar days from the receipt by EPA of the notification of ob-  
20   jection to reach agreement. If an agreement is not reached  
21   within this fourteen (14) day period, Respondent may request a  
22   determination by EPA's Deputy Director for Superfund, Region 9.  
23   The Deputy Director's determination shall set forth EPA's deci-  
24   sion regarding the disputed issue. Respondent shall then imple-  
25   ment EPA's decision. Use of the dispute resolution provision  
26   will not relieve Respondent's duty to complete the other tasks in

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1 a timely manner in accordance with the schedule. This dispute  
2 resolution provision or EPA's decision pursuant to this provision  
3 does not grant or imply jurisdiction to any court to review EPA's  
4 decisions pursuant to this Consent Order.

5  
6 **XI. STIPULATED PENALTIES**

7 A. Except with respect to any extensions allowed by EPA in  
8 writing, or granted pursuant to the provisions of Section XII  
9 (Force Majeure), for each day in which Respondent fails to submit  
10 a report or document, or in which Respondent otherwise fails to  
11 achieve the requirements of this Consent Order, Respondent agrees  
12 to pay the sums set forth below as stipulated penalties. These  
13 penalties shall accrue commencing upon the earliest of the fol-  
14 lowing occurrences: Respondent's receipt of the written deter-  
15 mination of disapproval, as specified in Section V; or  
16 Respondent's receipt of written notice from EPA that a violation  
17 of this Consent Order has occurred. The imposition or amount of  
18 penalties are not subject to Dispute Resolution (Section X).  
19 Dispute Resolution shall not stay the accrual of these stipulated  
20 penalties.

21 B. Stipulated penalties shall accrue in accordance with the  
22 following schedule:

- 23  
24 1. For the first seven (7) calendar days of violation-\$  
25 5,000 per day per violation;  
26 2. For each and every calendar day of violation after  
27 the seventh (7th) day of violation - \$10,000 per  
day per violation.



1 C. Respondent's payment of the stipulated penalty shall be  
2 due upon demand by the Deputy Director for Superfund, U.S. EPA,  
3 Region 9, by certified check made payable to the "EPA Hazardous  
4 Substance Superfund" and addressed to:

5 U.S. Environmental Protection Agency  
6 Region 9, Attn: Superfund Accounting  
7 P.O. Box 360863M  
8 Pittsburgh, PA 15251

9 Respondent shall send a cover letter with any check and the let-  
10 ter shall identify the Site by name and EPA identification number  
11 (Valley Wood Preserving, Inc., Site Identification # 9TGB09K6K5)  
12 and make reference to this Consent Order. Respondent shall send  
13 simultaneously to the EPA Project Coordinator a notification of  
14 the penalty paid, including a photocopy of the front and back of  
15 the check.

16 D. These stipulated penalties provisions do not preclude EPA  
17 from pursuing any other remedies or sanctions which are available  
18 to EPA because of Respondent's failure to comply with this Con-  
19 sent Order. EPA will notify Respondent of its determination to  
20 pursue other remedies or sanctions.

21 XII. FORCE MAJEURE

22 A. If an event occurs which causes delay in the achievement  
23 of the requirements of this Consent Order, Respondent shall have  
24 the burden of proving that the delay was caused by circumstances  
25 entirely beyond the control of Respondent, its contractors or  
26 agents and could not be overcome. Economic hardship, normal in-  
27 clement weather, and increased costs of performance shall not be

1 considered events beyond the control of Respondent and shall not  
2 trigger the force majeure clause. In the event of a force  
3 majeure, the time for performance of the activity delayed by the  
4 force majeure shall be extended, except to the extent that the  
5 dependent activity can be implemented in a shorter time. EPA  
6 shall determine whether subsequent requirements are to be delayed  
7 and the time period granted for any delay. Respondent shall  
8 adopt all reasonable measures to avoid or minimize any delay  
9 caused by a force majeure.

10 B. When an event occurs or has occurred that may delay or  
11 prevent the performance of any obligation under this Consent Or-  
12 der, which Respondent believes is due to a force majeure, Respon-  
13 dent shall notify by telephone the EPA Project Coordinator, or in  
14 his/her absence, the Deputy Director for Superfund, U.S. EPA,  
15 Region 9, within twenty-four (24) hours, or, where there is a  
16 weekend or holiday intervening, within seventy-two (72) hours, of  
17 the commencement of such event. Oral notification shall be fol-  
18 lowed by written notification, made within seven (7) business  
19 days of when Respondent knew or should have known of the event  
20 causing the delay or anticipated delay. The written notification  
21 shall fully describe: the reasons for the delay; the reasons the  
22 delay is entirely beyond the control of Respondent, its contrac-  
23 tors and agents; the anticipated duration of the delay; actions  
24 taken or to be taken to prevent or minimize the delay; a schedule  
25 for implementation of any measures to be taken to mitigate the  
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1 effect of the delay; and any aspects of the event which may cause  
2 or contribute to an endangerment to public health, welfare or the  
3 environment.

4 C. Failure of Respondent to comply with the force majeure  
5 notice requirements will be deemed an automatic forfeiture of  
6 their right to request a delay.

7 D. If EPA and Respondent cannot agree that any delay in com-  
8 pliance with the requirements of this Consent Order has been or  
9 will be caused by circumstances entirely beyond the control of  
10 Respondent, its contractors and agents, or on the duration of any  
11 delay necessitated by a force majeure event, the dispute shall be  
12 resolved according to the dispute resolution provisions in Sec-  
13 tion X. Respondent shall have the burden of proving by a prepon-  
14 derance of the evidence: that the delay was caused by cir-  
15 cumstances entirely beyond the control of Respondent, its con-  
16 tractors and agents; that reasonable measures were taken to avoid  
17 or minimize delay; and the necessity of the duration of the  
18 delay.

19  
20 **XIII. RESERVATION OF RIGHTS**

21 A. Notwithstanding compliance with the terms of this Con-  
22 sent Order, including the completion of an EPA-approved remedial  
23 investigation and feasibility study, Respondent is not released  
24 from any claim, cause of action or demand in law or equity. EPA  
25 reserves the right to take any enforcement action pursuant to  
26 CERCLA and/or any other legal authority, including but not  
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1 limited to the right to seek past and future response costs and  
2 injunctive relief. EPA also reserves the right to seek monetary  
3 penalties and punitive damages for any civil or criminal viola-  
4 tion of law or this Order. The parties agree that Respondent's  
5 performance of the work required by this Order does not reduce  
6 any liability it may have for past or future response costs in-  
7 curred by EPA in connection with the Site.

8 B. EPA expressly reserves all rights and defenses that it  
9 may have, including EPA's rights to both disapprove of work per-  
10 formed by Respondent and to request that Respondent perform tasks  
11 in addition to those required by this Consent Order. EPA  
12 reserves the right to undertake removal actions and/or remedial  
13 actions at any time. EPA reserves the right to seek reimburse-  
14 ment from Respondent for all costs incurred by the United States  
15 with regard to the Site.

16 C. In entering into this Consent Order, Respondent waives  
17 any right to seek reimbursement or present any claim under Sec-  
18 tions 106, 111 or 112 of CERCLA, 42 U.S.C. §§ 9606, 9611 or 9612,  
19 for any work performed pursuant to this Consent Order and any  
20 modifications thereto.

21 D. Nothing in this Order shall constitute or be construed  
22 as a release from any claim, cause of action or demand in law or  
23 equity against a person, firm, partnership, subsidiary or cor-  
24 poration not a signatory to this Order for any liability it may  
25 have arising out of or relating in any way to the Facility.

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1 E. Respondent shall bear its own attorneys fees and costs  
2 with respect to all matters associated with this Consent Order.  
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4 **XIV. REIMBURSEMENT OF COSTS**

5 EPA will submit to Respondent documentation for all response  
6 and oversight costs, including indirect costs, incurred by EPA  
7 associated with this Site prior to the effective date of the Con-  
8 sent Order. In addition, no more often than annually, EPA shall  
9 submit to Respondent documentation for all response and oversight  
10 costs incurred by the U.S. Government with respect to this Site.  
11 EPA's Agency Financial Management System summary data (SPUR  
12 Reports) shall serve as the documentation for payment demands.  
13 Respondent shall, within thirty (30) calendar days of receipt of  
14 each accounting, remit a check for the amount of those costs made  
15 payable to the Hazardous Substance Response Trust Fund. Checks  
16 should specifically reference the identity of the Site (Valley  
17 Wood Preserving, Inc., Site Identification # 9TGB09K6K5) and be  
18 addressed to:

19 U.S. Environmental Protection Agency  
20 Region 9, Attn. Superfund Accounting  
21 P.O. Box 360863M  
Pittsburgh, PA 15251

22 A copy of the transmittal letter and check shall be sent  
23 simultaneously to the EPA Project Coordinator. EPA reserves the  
24 right to bring action against Respondent pursuant to Section 107  
25 of CERCLA, 42 U.S.C. § 9607, for recovery of all response and  
26 oversight costs incurred by the United States related to this  
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1 Consent Order and not reimbursed by Respondent, as well as any  
2 other unreimbursed past and future costs incurred by the United  
3 States in connection with response activities conducted at this  
4 Site.

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**XV. COMPLIANCE WITH OTHER LAWS**

7 Respondent shall comply with all federal, state and local  
8 laws and regulations in carrying out the terms of this Consent  
9 Order. Any and all hazardous substances removed from the Site  
10 must be handled in accordance with the Resource Conservation and  
11 Recovery Act of 1976, 42 U.S.C. §§ 6921, et seq., the regulations  
12 promulgated under that Act, and Section 121(d)(3) of CERCLA, 42  
13 U.S.C. § 9621(d)(3).

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**XVI. COMMUNITY RELATIONS/PUBLIC COMMENT**

16 EPA will implement a Community Relations Program in accor-  
17 dance with Agency policies, guidance documents and public comment  
18 policy. Respondent shall participate in community relations ac-  
19 tivities organized by EPA when such participation is deemed ap-  
20 propriate by EPA.

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**XVII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT**

23 Respondent agrees to indemnify and hold the United States  
24 Government, its agencies, departments, agents, contractors, and  
25 employees, harmless from any and all claims or causes of action  
26 arising from or on account of acts or omissions of Respondent,

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1 its officers, employees, receivers, trustees, agents, successors,  
2 assignees or any other persons, including but not limited to cor-  
3 porations, firms and contractors, in carrying out activities pur-  
4 suant to this Consent Order. The United States Government is not  
5 a party to any contract entered into by Respondent, nor shall any  
6 provision in this Consent Order be construed to make the United  
7 States Government a party to any contract involving Respondent.

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9 **XVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATIONS**

10 A. EPA and Respondent agree that this Consent Order is ef-  
11 fective as of May 1, 1990.

12 B. No informal advice, guidance, suggestions, or comments  
13 by EPA regarding reports, plans, specifications, schedules, and  
14 any other writing submitted by Respondent will be construed as  
15 relieving Respondent of its obligations to obtain such formal ap-  
16 proval as may be required by this Consent Order.

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18 **XIX. PARTIES BOUND**

19 A. This Order shall apply to and be binding upon Respon-  
20 dent, its agents, employees, contractors, successors, and as-  
21 signs. No change in ownership or corporate or partnership status  
22 will alter Respondent's obligations under this Consent Order.  
23 Respondent shall provide a copy of this Consent Order to any sub-  
24 sequent owner(s) or successor(s) before ownership rights are  
25 transferred.

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1        B. Respondent shall provide a copy of this Order to all  
2        contractors, subcontractors, laboratories and consultants  
3        retained to conduct any portion of the work required by this Or-  
4        der within five (5) days of retaining any such contractor, sub-  
5        contractor, laboratory or consultant or within five (5) days of  
6        the effective date of this Consent Order, whichever is later.  
7        Notwithstanding the terms of any contract, Respondent is respon-  
8        sible for compliance with this Order and for ensuring that its  
9        contractors and agents comply with this Order.

10       C. The signatories to this Order certify that they are  
11       authorized to execute and legally bind the parties they represent  
12       to this Order.

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**XX. NOTICE TO STATE**

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**XXI. TERMINATION AND SATISFACTION**

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1                   XXII. ASSURANCE OF ABILITY TO COMPLETE WORK

2                   A. Respondent shall demonstrate its ability to perform  
3 all work required by this Consent Order by obtaining, and  
4 presenting to EPA for approval within thirty (30) days after the  
5 effective date of this Consent Order one of the following items:  
6 1) performance bond; 2) letter of credit; or 3) guarantee by a  
7 third party. EPA may disapprove the financial assurance  
8 mechanism presented if in EPA's determination it does not provide  
9 adequate assurance that Respondent is able to complete the work  
10 to be performed under Section V (Work to be Performed) of this  
11 Consent Order.

12                  B. In lieu of any of the three items listed above,  
13 Respondent may present for EPA's review and determination, inter-  
14 nal financial information sufficient to satisfy EPA that Respon-  
15 dent has enough assets to make it unnecessary to require addi-  
16 tional assurances. If Respondent relies on internal financial  
17 information for financial assurances, Respondent shall submit  
18 such financial information to EPA within thirty (30) days after  
19 the effective date of this Consent Order. If EPA determines the  
20 financial assurances to be inadequate, Respondent shall obtain  
21 one of the three financial instruments listed in Paragraph A of  
22 the Section within thirty (30) days of such determination.

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1 IT IS SO AGREED AND ORDERED:

2  
3 UNITED STATES  
4 ENVIRONMENTAL PROTECTION AGENCY

5 By: Jeff Zelikson  
6 Director,  
7 Hazardous Waste Management Division  
8 Region 9

Date: 5-10-90

9  
10 RESPONDENT VALLEY WOOD PRESERVING, INC.

11 By: Charles W. Rogers  
12 its Pres.

Date: 5/3/90

13  
14 Contacts:

15 Gavin McCabe  
16 Office of Regional Counsel  
17 U.S. Environmental Protection Agency  
18 1235 Mission Street  
19 San Francisco, CA 94103  
20 (415) 556-5878

21 Mary Masters  
22 Superfund Enforcement Branch, H-7-2  
23 U.S. Environmental Protection Agency  
24 1235 Mission Street  
25 San Francisco, CA 94103  
26 (415) 744-1178

27 Robert Bornstein  
Emergency Response Section, H-8-3  
U.S. Environmental Protection Agency  
1235 Mission Street  
San Francisco, CA 94103  
(415) 744-1914